

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

June 4, 2003

IN RE:

**SMALL TELEPHONE COMPANIES TARIFF
FILINGS REGARDING RECLASSIFICATION OF
PAY TELEPHONE SERVICE AS REQUIRED BY
FEDERAL COMMUNICATIONS COMMISSION
(FCC) DOCKET 96-128**

**DOCKET NO.
97-01181**

**SECOND REPORT AND RECOMMENDATION
OF THE PRE-HEARING OFFICER**

This case is before the Pre-Hearing Officer for consideration of the *Proposed Settlement Agreement* jointly filed by the Tennessee Coalition of Small Local Exchange Companies ("Coalition") and the Tennessee Payphone Owners Association ("TPOA") on April 22, 2003.¹ The Coalition and the TPOA have reached an agreement that they maintain resolves the issues pending in this docket. The Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter ("CAPD") does not object to the *Proposed Settlement Agreement*.

¹ The Coalition consists of the following companies: Ardmore Telephone Company, Inc., the CenturyTel. Inc. Companies in Tennessee (including CenturyTel of Adamsville, Inc., CenturyTel of Claiborne, Inc. and CenturyTel of Ooltewah-Collegedale, Inc.), Loretto Telephone Company, Inc., the TDS Telecom Companies in Tennessee (including Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone Company, Inc. and Tennessee Telephone Company), the Telephone Electronics Corp. ("TEC") Companies in Tennessee (including Crockett Telephone Company, Inc., Peoples Telephone Company, Inc. and West Tennessee Telephone Company, Inc.) and United Telephone Company, Inc.

Background

Pursuant to Section 276 of the Telecommunications Act of 1996 (the "Act"), the Federal Communications Commission ("FCC") issued a series of orders for the implementation of payphone reclassification and compensation in its Docket No. 96-128.² The FCC Payphone Orders mandated state commissions to enforce new rules, which, among other things, required telephone companies to file with state commissions tariffs reclassifying payphones and removing subsidies to payphone operations from other classes of services.

Accordingly, during January, February, and March of 1997 all incumbent local exchange carriers ("ILECs") under the Authority's jurisdiction filed tariffs and revised tariffs to reclassify their payphone operations as mandated by the Act and the FCC Payphone Orders. These tariff filings were opposed by the TPOA, AT&T of the South Central States, Inc. ("AT&T"), MCI Telecommunications Corporation ("MCI") and the CAPD, all of which filed petitions to intervene.

In April and May of 1997, the Authority entered orders which: (1) granted the petitions to intervene;³ (2) approved the payphone reclassification tariffs filed by the ILECs pending the outcome of a contested case;⁴ and (3) opened a combined docket to proceed with the contested case. The combined docket was assigned Docket No. 97-00409. Director H. Lynn Greer, Jr. was appointed Pre-Hearing Officer.

At a Pre-Hearing Conference held on May 29, 1997, the CAPD requested that the Authority bifurcate these proceedings by separating the larger local exchange carriers ("LECs")

² See, e.g., *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, FCC 96-388 (Report and Order) 11 F.C.C.R. 20,541 (Sept. 20, 1996); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, FCC 96-388 (Order on Reconsideration) 11 FCC Rcd 21,233 (Nov. 8, 1996).

³ On August 17, 2000, AT&T withdrew its intervention.

⁴ See Docket No. 97-00409.

from the smaller carriers. Based on concerns that the expense of preparing the cost studies necessary to determine the rates of the larger LECs would be too great for the smaller, independent LECs, the Pre-Hearing Officer ordered the bifurcation. The Pre-Hearing Officer determined that the matters related to the larger LECs, BellSouth Telecommunications, Inc. ("BellSouth"), United Telephone-Southeast, Inc. ("UTSE"), and Citizens Telecommunications Company of Tennessee and Citizens Telecommunications Company of the Volunteer State (collectively "Citizens") would remain in Docket No. 97-00409 and a new docket, Docket No. 97-01181, would be opened to address matters related to the smaller, independent LECs.⁵ The Pre-Hearing Officer memorialized this decision in the *Order Establishing a Separate Docket for the Smaller Companies* entered on June 6, 1997.

Thereafter, by agreement of the parties, both payphone dockets remained inactive for nearly three years until March 21, 2000 when the TPOA filed a letter with the Authority requesting that the Pre-Hearing Officer reconvene the proceeding and set a procedural schedule. On July 21, 2000, the Pre-Hearing Officer filed an Order reconvening Docket No. 97-00409 and directing the parties in Docket Nos. 97-00409 and 97-01181 to file comments concerning how to proceed.⁶ After considering the comments of the parties, the Pre-Hearing Officer filed a July 31, 2000 Order⁷ reflecting his decision to maintain separate proceedings and allow the independent LECs to intervene in Docket No. 97-00409 for the limited purpose of commenting on the proposed rates.

⁵ The independent LECs included: Ardmore Telephone Co.; the Century companies consisting of CenturyTel of Adamsville, CenturyTel of Claiborne, and CenturyTel of Ooltewah-Collegedale; Loretto Telephone Co.; Millington Telephone Co.; the TDS companies consisting of Concord Telephone Exchange, Inc., Humphreys County Telephone Co., Tellico Telephone Co., and Tennessee Telephone Co.; the TEC companies consisting of Crockett Telephone Co., Peoples Telephone Co., and West Tennessee Telephone Co.; and United Telephone Co.

⁶ See *Order of Pre-Hearing Officer Denying Motion for Interim Relief, Requesting Comments from Parties to Docket 97-00409 and Setting a Procedural Schedule*, Docket No. 97-00409 (July 21, 2000).

⁷ See *Order of Pre-Hearing Officer Continuing Separation of the Docket No. 97-01181, Granting the Tennessee Small Local Exchange Companies Coalition's Petition to Intervene in Docket No. 97-00409*, Docket Nos. 97-00409 and 97-01181 (July 31, 2000).

Thereafter, BellSouth, UTSE, Citizens and TPOA engaged in discovery and filed evidence in Docket No. 97-00409. After a Hearing on October 25, 2000, the Directors established compliant payphone rates for BellSouth and Citizens. The Authority memorialized this decision in the *Interim Order* entered on February 1, 2001.⁸

The rates of UTSE remained unresolved until May 6, 2002, when the *Proposed Payphone Settlement Between TPOA and United* ("Large Payphone Settlement Agreement") was filed. The Authority approved the Large Payphone Settlement Agreement, including the UTSE payphone rates proposed therein, at the May 21, 2002 Authority Conference. This decision was memorialized in the *Final Order* entered on June 12, 2002, thereby concluding the proceedings in Docket No. 97-00409 before the Authority.

With the conclusion of Docket No. 97-00409, any benefit that may have been achieved by completing the large company docket prior to taking up the small company docket was realized. Accordingly, at the Authority Conference held on September 9, 2002, the Authority unanimously appointed Director Pat Miller to replace former Director H. Lynn Greer, Jr. as the Pre-Hearing Officer in Docket No. 97-01181 for the purpose of reconvening the docket and preparing this matter for decision by the Authority.⁹

On September 26, 2002, the Pre-Hearing Officer issued a *Notice* directing the parties to file no later than October 10, 2002 comments and rate proposals for the provisioning of payphone access services to payphone service providers. Between October 9 and November 1, a

⁸ BellSouth filed a Petition for Review of the Authority's decision in the Tennessee Court of Appeals on December 29, 2000. On July 16, 2002, the Court of Appeals issued a decision affirming the Authority's decision regarding the imposition of interest on the refund awarded to the TPOA. See *BellSouth Telecommunications, Inc. v. Tennessee Regulatory Authority*, 2002 WL 1558598 (Tenn. Ct. App. July 16, 2002) (Tenn. R. App. P. 11 application denied, Dec. 23, 2002).

⁹ The terms of the former Directors of the Authority, Chairman Sara Kyle and Directors H. Lynn Greer, Jr. and Melvin J. Malone, expired on June 30, 2002. Chairman Kyle was re-appointed and commenced a new term as Director of the Authority on July 1, 2002. Pursuant to the requirements of the amended provisions of Tenn. Code Ann. § 65-1-204, a three-member voting panel consisting of Chairman Kyle and Directors Deborah Taylor Tate and Ron Jones was randomly selected and assigned to Docket No. 97-01181.

series of motions for extension of time and for continuance were successfully sought to facilitate settlement negotiations.

On November 4, 2002, consistent with the September 26, 2002 Notice, Crockett Telephone Company, Inc., Peoples Telephone Company, Inc. and West Tennessee Telephone Company, Inc. (collectively the "TEC Companies") and Millington Telephone Company ("Millington") filed tariffs. The TEC Companies proposed an effective date of November 5, 2002 for implementation of the tariff.

At the November 4, 2002 Authority Conference, the Directors determined that the interests of administrative economy and consistency required Millington's rate proposal to be considered simultaneously with the rate proposals of the Coalition. Accordingly, the Directors voted unanimously to defer action on Millington's payphone tariff filing for ninety (90) days, from November 14, 2002 through February 11, 2003.

On November 25, 2002, the Pre-Hearing Officer convened a Pre-Hearing Conference. At the Pre-Hearing Conference, the Pre-Hearing Officer temporarily suspended the procedural schedule to facilitate settlement negotiations. During the ensuing discussion on the status of such negotiations and the parameters of an acceptable settlement agreement, the parties' dispute on the fundamental issue of whether 47 U.S.C. § 276 was applicable to this case became apparent.

At the December 2, 2002 Authority Conference, the panel determined that the interests of administrative economy and consistency required the TEC Companies' rate proposal to be considered simultaneously with the rate proposals of the Coalition and unanimously voted to defer action on TEC Companies' payphone tariff filing for ninety (90) days, from November 5, 2002 through February 2, 2003. On December 4, 2002, the TEC Companies filed a notice of their intent to withdraw the tariffs filed on November 4, 2002.

On December 6, 2002, the Pre-Hearing Officer filed the first *Report and Recommendation of the Pre-Hearing Officer*, directing the parties to brief the issue of whether 47 U.S.C. § 276, as interpreted by the FCC, is applicable to this case. The Pre-Hearing Officer also set a procedural schedule preliminary to a Hearing on the merits. Having prepared the docket for a Hearing as directed, the Pre-Hearing Officer also recommended that the panel find that his duties were concluded.

After filing the above mentioned briefs, the parties orally argued the issue at the January 6, 2003 Authority Conference. The briefs and oral arguments filed by the Coalition and the TPOA asserted that the application of 47 U.S.C. § 276 to this case is not mandatory because the members of the Coalition are not Bell operating companies ("BOCs"). The brief of the CAPD argued that Section 276 applied to all local exchange carriers, not just BOCs, and that one of the most recent FCC orders on the subject, the *Memorandum Opinion and Order* issued on January 31, 2002, in *In the Matter of Wisconsin Public Service Commission*, did not apply to Tennessee.¹⁰

At the January 27, 2003 Authority Conference, the panel unanimously found that 47 U.S.C. § 276(b)(1)(B) applies to all payphone service providers, including non-BOCs. The panel based this conclusion upon the plain language of 47 U.S.C. § 276(b)(1)(B) which states:

In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after February 9, 1996, the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that –

- ...
- (B) discontinue the intrastate and interstate carrier access charge payphone service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange and

¹⁰ See *In the Matter of Wisconsin Public Serv. Comm'n*, FCC 02-25 (*Memorandum Opinion and Order*) 17 F.C.C.R. 2051 (January 31, 2002) (hereinafter "*Wisconsin Order*").

exchange access revenues, in favor of a compensation plan as specified in subparagraph A; . . .

The panel also relied upon footnote 80 of the *Memorandum Opinion and Order* issued by the FCC in *In the Matter of Wisconsin Public Service Commission*. Footnote 80 states:

Section 276(b)(1)(B) is somewhat broader than section 276(a)(1) because it applies to all LECs [local exchange carriers] and is not limited to the BOCs, as is section 276(a)(1). That distinction explains why Congress included a separate directive to the Commission to eliminate subsidies.¹¹

The panel then unanimously voted to direct the parties to file supplemental briefs addressing the following issues no later than February 26, 2003:

1. Whether 47 U.S.C. § 276(b)(1)(B), which applies to all local exchange carriers, requires cost-based rates?
2. Whether the previous actions of the [TRA] in removing subsidies have satisfied the requirements of 47 U.S.C. § 276(b)(1)(B)?

Further, to expedite the resolution of the case, the panel unanimously voted to appoint the General Counsel or his designee as Pre-Hearing Officer in this docket.¹²

On February 6, 2003, Millington filed an unopposed request to withdraw Tariff 2002-00363. At the regularly scheduled Authority Conference on February 18, 2003, the panel approved Millington's request.

On February 26, 2003, the Coalition filed its Supplemental Brief as ordered. The Coalition argued that 47 U.S.C. § 276(b)(1)(B) does not require cost-based rates because the plain language of that section limits its applicability only to subsidies, not rates.¹³ The Coalition

¹¹ *Id.*, ¶ 34, n. 80.

¹² On February 12, 2003, the panel approved the first *Report and Recommendation of the Pre-Hearing Officer*, thereby excusing the then-appointed Pre-Hearing Officer from further involvement in this docket. On March 10, 2003, the panel issued the *Order Requiring Additional Briefing on the Application of 47 U.S.C. § 276 to this Case and Appointing Pre-Hearing Officer* which memorialized the decisions made during the January 27, 2003 Authority Conference.

¹³ In its reference to subsidies, the Coalition refers to elimination of payphone subsidies from carrier access charges and basic exchange and exchange access revenues.

maintained that the FCC relied upon 47 U.S.C. § 276 (b)(1)(C), rather than Section 276(b)(1)(B), to require cost-based rates for payphone line services.¹⁴ The Coalition further asserted that the TRA satisfied the requirements of Section 276(b)(1)(B) in its *Order Granting Intervention of the Consumer Advocate, Appointing a Pre-Hearing Officer and Approving Tariffs for Reclassification of Pay Telephones*, which approved tariff filings for members of the Coalition pending the outcome of a contested case.¹⁵ The Coalition argued that, pursuant to the *Order*, payphone subsidies existing in the Carrier Common Line ("CCL") charges of the TDS Telecom Companies in Tennessee ("TDS") (including Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone Company, Inc. and Tennessee Telephone Company), and United Telephone Company ("United") were removed. The Coalition further maintained that because its members also deregulated their payphone services and concurred in tariffs filed with the FCC by the National Exchange Carrier Association, Section 276(b)(1)(B) is fully satisfied.

On February 26, 2002, the CAPD filed its Supplemental Brief. The CAPD argued that, while an alternative to cost-based rates may exist, in a practical sense, the use of cost-based rates is the best available means to assure that subsidies are eliminated as required under Section 276(b)(1)(B). The CAPD contended that cost-based rates must be imposed to promote the goal

¹⁴ 47 U.S.C. § 276 (b)(1)(C) states:

In order to promote competition among payphone service providers and promote the widespread deployment of payphone services to the benefit of the general public, within 9 months after February 8, 1996, the Commission shall take all actions necessary (including any reconsideration) to prescribe regulations that--;

- (C) prescribe a set of nonstructural safeguards for Bell operating company payphone service to implement the provisions of paragraphs (1) and (2) of subsection (a) of this section, which safeguards shall, at a minimum, include the nonstructural safeguards. . . .

¹⁵ See *In re: Tariff Filings By Local Exchange Companies to Comply with FCC Order 96-439, Concerning the Reclassification of Pay Telephones*, Docket No. 97-00409, *Order Granting Intervention of the Consumer Advocate, Appointing a Pre-Hearing Officer and Approving Tariffs for Reclassification of Pay Telephones* (May 2, 1997).

of Section 276, the establishment of an open and competitive payphone market. The CAPD noted that in the *Interim Order* issued in Docket No. 97-00409, the TRA applied a cost-based methodology to the larger non-BOC LECs. The CAPD argued that a consistent methodology must be applied here. Further, the CAPD asserted that the FCC encouraged states to impose cost-based rates on non-BOC LECs in the *Wisconsin Order* and that both state and federal law support the imposition of cost-based rates. The CAPD further argued that the TRA should act consistently with its previous actions in removing subsidies to satisfy the requirements of Section 276(b)(1)(B). The CAPD maintained that the policy announced in the *Interim Order* in Docket No. 97-00409 formally adopted Section 276 and the FCC's requirements. According to the CAPD, that policy consisted of determinations that (1) the rates adopted by the TRA apply to all providers of payphone service; (2) rates must be cost-based, non-discriminatory and consistent with Section 276 and Tenn. Code Ann. § 65-5-208(c); (3) payphone rates should include a monthly flat rate component and a usage rate component; and (4) the New Services test is the proper methodology for calculating cost-based rates. The CAPD noted that three of the four companies to which this policy was applied were non-BOC LECs.

The TPOA adopted the CAPD's Supplemental Brief in its entirety.

On March 12, 2003, the newly-appointed Pre-Hearing Officer issued the *Order Setting Pre-Hearing Conference*. The *Order Setting Pre-Hearing Conference* notified the parties that the following matters would be addressed: (1) the status of the case; (2) responses to the arguments raised in the Supplemental Briefs; and (3) proposals that, in the absence of cost studies, could result in the adoption of a basis for certifying that all intrastate and interstate payphone subsidies from basic exchange and exchange access revenue have been removed. On April 3, 2003, the parties filed responses to the Supplemental Briefs filed on February 26, 2003.

The April 21, 2003 Pre-Hearing Conference

On April 21, 2003, the Pre-Hearing Officer convened the Pre-Hearing Conference. The parties in attendance included:

Tennessee Coalition of Small Local Exchange Companies – **R. Dale Grimes, Esq.**, Bass, Berry & Sims, PLC, 315 Deaderick St., Suite 2700, Nashville, TN 37238;¹⁶

Tennessee Payphone Owners Association -- **Henry Walker, Esq.**, Boulton, Cummings, Conners & Berry, 414 Union St., No. 1600, Nashville, TN 37219;

The Consumer Advocate and Protection Division of the Office of the Attorney General – **Timothy Phillips, Esq.** and **Shilina Chatterjee, Esq.**, 425 5th Avenue North, 2nd Floor, Nashville, TN 37243.

Immediately after the Pre-Hearing Conference convened, the Coalition and the TPOA announced that they had reached a settlement of all issues, subject to the approval of the Authority. As described, the terms of the settlement included a lump sum payment of \$75,000 to the TPOA by the Coalition, which was represented not as a refund, but as a payment to avoid further litigation. In addition, members of the Coalition agreed to a prospective reduction in payphone line rates to the rate approved by the TRA for UTSE in Docket No. 97-00409, approximately thirty dollars (\$30) per month.¹⁷ According to the Coalition, the only member companies that had monthly rates materially above thirty dollars (\$30) are the Century companies consisting of CenturyTel of Adamsville, CenturyTel of Claiborne, and CenturyTel of Ooltewah-Collegedale, Millington, Loretto and TDS. During the Pre-Hearing Conference, the Coalition and the TPOA agreed that the implementation of this agreement would complete the TRA's obligations under 47 U.S.C. § 276.

During the discussion of the proposed settlement, the Pre-Hearing Officer inquired whether the proposed agreement addressed the subsidy issue contemplated by 47 U.S.C. §

¹⁶ Mr. Bruce Mottern of TDS was also in attendance.

¹⁷ The rates of Coalition members that are presently lower than that amount would remain unchanged. The Coalition members that are lowering their rates agreed to the base rate approved for United rather than the base rates as adjusted by property taxes.

276(b)(1)(B). In response, the Coalition and the TPOA stipulated that nothing further needed to be done to payphone rates to implement Section 276. The Coalition stated that if discontinuing subsidies remains an issue, it would withdraw its offer to settle this case. The Coalition and the TPOA agreed to file a written representation of their proposed settlement agreement by April 22, 2003.

On April 22, 2003, the TPOA and the Coalition filed the *Proposed Settlement Agreement* (attached hereto as Exhibit A), which memorialized the terms discussed during the Pre-Hearing Conference.

On April 23, 2003, the Pre-Hearing Officer issued a *Notice* directing the CAPD to file comments, if any, on the *Proposed Settlement Agreement* no later than April 28, 2003. On April 28, 2003, the CAPD filed the *Consumer Advocate and Protection Division of the Office of the Attorney General's Comments on Settlement Between the Coalition of Tennessee Small Local Exchange Companies and the Tennessee Payphone Owners Association*. The CAPD stated that it had not completed its review of the settlement. On April 30, 2003, the CAPD informed the Pre-Hearing Officer that it would not file comments and did not oppose the *Proposed Settlement Agreement*.

Analysis of the Proposed Settlement Agreement

"The policy of the law is to favor compromise."¹⁸ The General Assembly codified that policy with regard to state agencies in Tenn. Code Ann. § 4-5-105, which states:

Except to the extent precluded by another provision of law, informal settlement of matters that may make unnecessary more elaborate proceedings under this chapter is encouraged. Agencies may establish specific procedures for attempting and executing informal settlement of matters. This section does not require any party or other person to settle a matter pursuant to informal procedures.

The record does not support a finding that the proposed settlement is precluded by

¹⁸ *Third Nat'l Bank v. Scribner*, 212 Tenn. 400, 370 S.W.2d 482, 487 (1963).

another provision of law. In a perfect world, a more precise conclusion to this case might have been reached, accompanied by substantial evidence clearly demonstrating undisputable compliance with every arguably applicable legal requirement. It is not a perfect world. Nevertheless, the Coalition and the TPOA have presented the panel with a reasonable avenue for resolving this longstanding controversy that takes into account the FCC's recent reinterpretation of 47 U.S.C. § 276 and the changing commercial environment for payphones.

After the Authority resolved most of the issues in Docket No. 97-00409, the FCC reexamined the reach of its jurisdiction under 42 U.S.C. § 276. On January 31, 2002, in the *Wisconsin Order*, the FCC concluded that it lacked jurisdiction to regulate the intrastate payphone rates charged by non-BOC LECs.¹⁹ Thus, the FCC's requirement that the Coalition's payphone rates satisfy the new services test, which was applied in Docket No. 97-00409, is no longer valid, though states have the discretion to apply the test. Thus, the fact that the record does not establish that rates proposed by the parties are consistent with the new services test would not preclude the panel's acceptance of the settlement. Further, in Docket No. 97-00409, the Authority relied upon UTSE's supporting cost data and methodology in approving UTSE's rates. These rates and underlying costs are being used as a proxy in lieu of company specific studies to establish the Coalition's rates under the Settlement Agreement.

Notwithstanding the FCC's reinterpretation of its jurisdiction over non-BOC LECs, the requirement under 47 U.S.C. § 276(b)(1)(B) to eliminate subsidies from basic exchange and exchange access revenues clearly applies to all payphone service providers, including non-BOCs. The Coalition contends that its members removed the subsidies in CCL charges. The Coalition further maintains that because its members also deregulated their payphone services

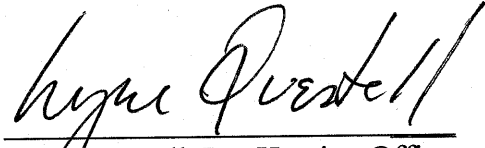
¹⁹ *Wisconsin Order*, ¶ 31.

and concurred in tariffs filed with the FCC by the National Exchange Carrier Association, Section 276(b)(1)(B) is fully satisfied.

The tariffs filed by the Coalition in 1997 and approved by the TRA contain reasonable estimates of the existing payphone subsidies. The record contains no evidence that contravenes the Coalition's contention that the previous reductions did not remove the appropriate amount of subsidies. Moreover, as noted above, the TPOA does not dispute this statement and the CAPD does not object to the *Proposed Settlement Agreement*. While company specific cost studies would be required to provide definitive proof on the precise subsidy amounts, the Authority's stated reason for convening a separate docket to address the application of Section 276 to small payphones was to avoid the expense of preparing the cost studies necessary to determine the rates of the larger LECs which, it was feared, would be too great for the smaller, independent LECs. This reasoning is even more germane in these difficult economic times, in which technological innovations are providing increasing challenges to the payphone industry. Accepting the agreed to resolution of this case will preclude potentially enormous expenses to the parties engendered by preparation for a hearing on the merits in this case, provide reasonable payphone rates to enhance competition in the payphone industry and promote the interests of administrative economy.

For the foregoing reasons, it is recommended that the panel approve the *Proposed Settlement Agreement*.

Respectfully submitted,


Lynn Questell, Pre-Hearing Officer

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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IN RE:

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SMALL TELEPHONE COMPANIES)
TARIFF FILINGS REGARDING)
RECLASSIFICATION OF PAY TELEPHONE)
SERVICE AS REQUIRED BY FEDERAL)
COMMUNICATIONS COMMISSION (FCC))
DOCKET 96-128)

Docket No. 97-01181

PROPOSED SETTLEMENT AGREEMENT

The Coalition of Small Local Exchange Companies¹ (the "Coalition") and the Tennessee Payphone Owners Association (TPOA) have reached a settlement of all remaining issues in this docket and jointly submit this Proposed Settlement Agreement to the Tennessee Regulatory Authority for consideration and approval. The terms of the settlement are as follows:

1. Coalition members whose current payphone access line rates are above the rates approved by the Authority for United Telephone Southeast (UTSE) in Docket No. 97-00409² shall amend their tariffs in order to reduce payphone rates as described below. The amended

¹ The Coalition consists of the following companies: (1) Ardmore Telephone Company, Inc.; (2) the CenturyTel, Inc. Companies in Tennessee consisting of (a) CenturyTel of Adamsville, Inc. ("Adamsville"), (b) CenturyTel of Claiborne, Inc. ("Claiborne"), and (c) CenturyTel of Ooltewah-Collegedale, Inc. ("Ooltewah"); (3) Loretto Telephone Company, Inc. ("Loretto"); (4) the TDS Telecom Companies in Tennessee consisting of (a) Concord Telephone Exchange, Inc. ("Concord"), (b) Humphreys County Telephone Company, (c) Tellico Telephone Company, Inc. ("Tellico"), and (d) Tennessee Telephone Company ("Tennessee Tel"); (5) the Telephone and Electronics Corp. ("TEC") Companies in Tennessee consisting of (a) Crockett Telephone Company, Inc. (b) Peoples Telephone Company, Inc. and (c) West Tennessee Telephone Company, Inc.; (6) United Telephone Company, Inc.; and (7) Millington Telephone Company, Inc. ("Millington"). In this Proposed Settlement Agreement, all references to the "Coalition" or "Coalition members" shall include each of the aforesaid companies.

² The rates approved for UTSE are as follows: a monthly payphone access line charge of \$26.39 and a traffic sensitive rate of \$0.0037 per minute. (The parties agree that this rate is the equivalent of a flat rate of \$30.00 a month). Optional call screening features are provided at no additional cost; however, service and installation charges will apply if such features are requested at the time of installation of the associated payphone access line. See Order of June 12, 2002, in Docket 97-00409, p. 12. These rates do not include tariffed interstate subscriber line charges or tariffed intrastate charges for answer supervision, coin control, service connection and touchtone charges.

EXHIBIT

A

tariffs shall be effective on the date of the issuance of an Order by the Authority approving this settlement. The Coalition and TPOA agree that, following the rate adjustments described in this settlement, the payphone access line rates of all Coalition members will be just and reasonable and consistent with the rates approved by the Authority in Docket No. 97-00409. Coalition members may apply the credit for property tax equity relief adjustment to the payphone access line rates approved herein.

2. Tennessee Tel, Concord, and Tellico will amend their tariffs to reduce payphone access line rates to equal the rates, terms, and conditions approved for UTSE as described in footnote 2.³

3. Ooltewah, Claiborne, Adamsville, Loretto, and Millington will amend their tariffs to reduce payphone access line rates to equal the flat-rated, single business line rate in that exchange, subject to the same terms and conditions as the UTSE payphone rates as described in footnote 2.

4. All other payphone access line rates of Coalition members will remain unchanged.

5. The Coalition will make a lump sum payment of \$75,000 to TPOA. The Coalition and TPOA agree that this payment is being made solely to avoid the expense of further litigation of any issues in this Docket. This payment will be due and payable, without interest, after approval of this Proposed Settlement Agreement by the Authority and within five (5) business days after entry of the Authority's order closing this Docket.

6. The Coalition and TPOA stipulate that, with regard to all members of the Coalition, upon approval and implementation of this settlement, the Authority will have fully

³ In any exchange which is not equipped to offer a measured usage rate, the UTSE equivalent rate will be presumed to be a flat monthly rate of \$30.00.

satisfied any and all of its obligations under Section 276 of the Federal Telecommunications Act, 47 U.S.C. § 276, related Orders of the Federal Communications Commission, and any related provision of state law, and that no issue will remain to be resolved, and this docket should be closed. The Coalition and TPOA further stipulate that federal law does not require states to adopt cost-based rates for non-Bell Operating Companies, nor does it require that any rate adjustment be retroactive.

7. By agreeing to this settlement, neither the Coalition nor the TPOA waives any right to continue litigating this matter should the settlement be rejected, in whole or in part. This settlement shall not be deemed an admission of liability nor an admission that any Coalition member was legally obligated to reduce its payphone access line rates or make any payment to the TPOA or any other person or party.


8. It is expressly agreed by the TPOA and the Coalition that this settlement shall be void and of no effect whatsoever if the Authority does not accept this Proposed Settlement Agreement as the full and final settlement of all issues in this Docket, or if the Authority imposes any other requirement beyond that set forth herein with respect to rates, costs, subsidies, refunds, reimbursements, payments, interest, or any other matter relating to payphone access line service of the Coalition members.

9. Any claim against Coalition members for costs, attorney's fees, refunds, interest, reimbursement, or any other monetary payment or relief of any kind or character whatsoever, beyond that set forth in this settlement, is expressly released and waived by the TPOA on behalf of itself and each of its members.

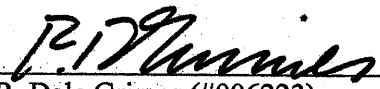
10. This Proposed Settlement Agreement is the full and final settlement of all claims asserted by the TPOA and its members against Coalition members with respect to payphone

access line rates, is their entire agreement, and contains all terms and conditions of their agreement.

Respectfully submitted,


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*Attorneys for Coalition of Small Local
Exchange Companies*

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Proposed Settlement Agreement, has been served, via the method(s) indicated, on this the 22nd day of April, 2003, upon the following:

<input type="checkbox"/> Hand	Guy M. Hicks, Esq.
<input checked="" type="checkbox"/> Mail	BellSouth Telecommunications, Inc.
<input type="checkbox"/> Facsimile	333 Commerce Street, Suite 2101
<input type="checkbox"/> Overnight	Nashville, TN 37201-3300
<input type="checkbox"/> Hand	James B. Wright, Esq.
<input checked="" type="checkbox"/> Mail	United Telephone-Southeast, Inc.
<input type="checkbox"/> Facsimile	14111 Capital Boulevard
<input type="checkbox"/> Overnight	Wake Forest, NC 27587-5900
<input type="checkbox"/> Hand	Timothy C. Phillips, Esq.
<input checked="" type="checkbox"/> Mail	Assistant Attorney General
<input type="checkbox"/> Facsimile	Office of the Tennessee Attorney General
<input type="checkbox"/> Overnight	Consumer Advocate and Protection Division
	425 5 th Avenue North, 2 nd Floor
	P.O. Box 20207
	Nashville, TN 37202
<input type="checkbox"/> Hand	Henry M. Walker, Esq.
<input checked="" type="checkbox"/> Mail	Boult, Cummings, Conners & Berry, PLC
<input type="checkbox"/> Facsimile	414 Union Street, Suite 1600
<input type="checkbox"/> Overnight	Nashville, TN 37219-8062
<input type="checkbox"/> Hand	Guilford F. Thornton, Jr., Esq.
<input checked="" type="checkbox"/> Mail	Stokes, Bartholomew, Evans & Petree
<input type="checkbox"/> Facsimile	Suntrust Center
<input type="checkbox"/> Overnight	424 Church Street, Suite 2800
	Nashville, TN 37219-2386
<input type="checkbox"/> Hand	J. Richard Collier, Esq.
<input checked="" type="checkbox"/> Mail	Tennessee Regulatory Authority
<input type="checkbox"/> Facsimile	460 James Robertson Parkway
<input type="checkbox"/> Overnight	Nashville, TN 37219
<input type="checkbox"/> Hand	Jon Hastings, Esq.
<input checked="" type="checkbox"/> Mail	Boult, Cummings, Conners & Berry, PLC
<input type="checkbox"/> Facsimile	414 Union Street, Suite 1600
<input type="checkbox"/> Overnight	Nashville, TN 37219-8062

